

Indiana Clean Water Coalition

To: Board Members, Indiana Water Pollution Control Board

From: Indiana Clean Water Coalition Members

- Rae Schnapp, Hoosier Environmental Council
- Deb Garrettson, Hoosier Chapter of Sierra Club
- Tom Neltner, Improving Kids' Environment
- Richard Hill, Save the Valley.

Date: July 21, 2003

Re: Proposed Amendment to Emergency Rule for CAFO General Permits

When you meet on August 7, IDEM will ask that you renew the Emergency Rule for CAFO General Permits that you adopted at your May 8 meeting. The emergency rule was published in the June 1, 2003 Indiana Register at 26 IR 3066.

At May 8 meeting, you opted not to amend the emergency rule because not all Board members received copies of proposed amendments submitted by all parties. Given the court-imposed deadline, you decided to avoid potential problems that could cause problems with the rule. You did agree to take up proposed amendments when the emergency rule was considered for readoption in August.

At your July 9 meeting, we asked that the Board consider the proposed amendments again. You agreed. IDEM said it would include this proposal in your August 7 Board packet to avoid any procedural problems. The proposed amendment is substantially the same as the one presented at that meeting. We have clarified some of the elements in response to questions.

We believe that the CAFO General NPDES Permit Rule needs to be revised in three critical areas:

1. Modify elements of the notice of intent letter to include essential items omitted from current requirements.
2. Establish criteria that IDEM must use to determine whether the facility is eligible for a general NPDES permit.
3. Require notification to adjoining property owners and other stakeholders when the permit is up for renewal in order to ensure that IDEM has the facts it needs to make a sound decision regarding the facility's eligibility for a general NPDES permit.

We hope that the ongoing discussions on the preliminarily adopted rule will address all three areas. But at the August 7 Board meeting we are only asking for one of those changes – the first one regarding the notice of intent letter – to be made to the emergency rule.

Correcting the notice of intent letter is important because CAFO's are submitting their notices of intent as a result of the emergency rule. Without these amendments, IDEM is missing critical information needed to manage these general permits. For instance, if the CAFO has had a manure discharge to the surface waters of the state, they must get an individual NPDES permit not a general NPDES permit. Yet, the current rule does not even require the CAFO to verify that it has not had a manure discharge. A simple – but critical – step is missing.

A delay in fixing the notice of intent letter will only disrupt the process down the line. We believe that it is best to get the notice of intent letters correct the first time.

We propose the following amendment to 327 IAC 15-15-5(b) as follows with new items appearing in bold type:

“(b) The NOI shall include the following:

- (1) Name, telephone number, and mailing address of the owner and operator.
- (2) Facility name and location address. Contact person and telephone number.
- (3) Type and number of animals at the facility.
- (4) Type of containment and storage and total capacity for manure, litter, and process wastewater storage.
- (5) Total number of acres under control of the applicant available for land application.
- (6) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).
- (7) List of other environmental permits held and permit numbers including the CFO farm ID number provided on state CFO approval under 327 IAC 16.
- (8) A topographic map of the facility.
- (9) Payment of application fee of fifty dollars (\$50).
- (10) SIC code for the facility.
- (11) **Name, telephone number and mailing address of:**
 - (i) **Owners and occupants of adjacent property;**
 - (ii) **Local health department and soil conservation service; and**
 - (iii) **Other people that have requested in writing to be notified of the facility's activities that may impact water quality.**
- (12) **List of any releases to the waters of the state from the facility during previous five years;**
- (13) **Identify any sensitive areas that a discharge from the facility is likely to have a substantial and direct impact on; and**
- (14) **Identify all enforcement actions that have been taken by any federal, state or local agency in the past five years that involved any owner or operator of the facility.**

Proposed Element 11

Name, telephone number and mailing address of:

- (i) Owners and occupants of adjacent property;*
- (ii) Local health department and soil conservation service; and*
- (iii) Other people that have requested in writing to be notified of the facility's activities that may impact water quality.*

IDEM needs to know who may need to be notified if the public is to receive any public notice. It is important to get this information now so that IDEM can act in a timely manner when the public notice requirements are adopted in the final rule. If the final rule does not require notice to all of these parties, no one will be the worse for having submitted it.

At the May 8 Board meeting, we proposed using the term "potentially affected parties" since that term had been long-used in IDEM's permitting program. Since that term was not defined in the rule, the Board was reluctant to adopt it at that meeting.

The Indiana Farm Bureau has already recommended notice for the first two groups on the list. We agree with the Indiana Farm Bureau. We also feel that local community or water quality groups that take the time to communicate directly to the facility in writing also deserve to be notified. There is virtually no burden adding this information since the facility would already be aware of it through the written notice. This approach is much narrower than IDEM's traditional definition of "potentially affected persons."

Proposed Element 12

List of any releases to the waters of the state from the facility during previous five years.

A facility with a release to the waters of the state during the past few years is not eligible for a general permit. We believe that it is important to require that the facility goes on the record as saying that it has not had any releases.

Proposed Element 13

Identify any sensitive areas that a discharge from the facility is likely to have a substantial and direct impact on.

A sensitive area includes drinking water reservoirs, wellhead protection areas, karst terrains, nature preserves, and historic sites among other places. The facility should be able to easily identify these sensitive areas through its knowledge of the community and the environment. Under the current CFO rule, they must comply with specific setback requirements. Sensitive areas are likely to be part of any eligibility criteria that is being discussed.

Without regard to the eligibility criteria, we believe that it is important that the facility identify these at-risk sensitive areas so IDEM can better understand the situation and set appropriate priorities for evaluation and inspection. Even if the facility has a general NPDES permit, if it is close to a sensitive area, IDEM should be inspecting it more regularly and more thoroughly than other facilities.

Proposed Element 14

Identify all enforcement actions that have been taken by any federal, state or local agency in the past five years that involved any owner or operator of the facility.

When a compliance problem rises to the level that demands enforcement, it may represent a systemic management problem. This problem is more likely to be occurring at other facilities with common ownership or a common operator. Because many CAFO's have operations in multiple states, IDEM needs to know what problems have been the subject of enforcement by other agencies. With this information it can set better and more effective priorities.

For example, if IDEM learns that another state agency has cited a "sister" facility for failure to follow its manure management plan, IDEM should make a point of focusing on that problem during inspections of related facilities in Indiana. And it should make these facilities a high priority when scheduling inspections.

The information should already be known by the facility. If it does not already know about enforcement actions at related facilities, it would benefit from knowing. Good management dictates that you learn from problems not just at the operation subject to enforcement but at all related operations.

The proposed amendments would impose little burden on the facilities. They should already have it. If they don't, then there is a problem.

Please contact Dr. Rae Schnapp at 317-685-8800 or rschnapp@hecweb.org or Tom Neltner at 317-442-3973 or neltner@ikecoalition.org for additional information.